

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Wayne Pope,

Petitioner

22-VH-0199-AG-127

780800287

October 2, 2023

DECISION AND ORDER

On August 26, 2022, Wayne Pope (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “Secretary”).

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f) (8) (i). Thereafter, Petitioner must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f) (8) (ii). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f) (4), on August 26, 2022, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On September 26, 2022, the Secretary filed her *Statement* along with documentation in support of her position. To date Petitioner has failed to file sufficient documentary evidence in support of his claim or in compliance with the Orders issued by this Court. This case is now ripe for review.

FINDINGS OF FACT

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to 31 U.S.C. § 3720D. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

The Secretary contends in her *Statement* that on February 23, 2013, Petitioner executed and delivered a Note to Home Loan Investment Bank, F.S.B. in the amount of \$24,544.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, Domestic Bank assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. As a result, Petitioner remains in default on the Note. Petitioner is justly indebted to the Secretary in the following amounts:

- a) \$1,492.84 as the unpaid principal balance as of August 31, 2022; and
- b) \$85.73 as the unpaid interest on the principal balance at 1% per annum through August 31, 2022; and
- c) \$1,285.69 as the unpaid penalties and administrative costs as of August 31, 2022; and,
- d) interest on said principal balance from September 1, 2022, at 1% per annum until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated July 25, 2022, was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. Petitioner did not enter into a repayment agreement or pay the debt in full as provided in the Notice. As requested by Petitioner, a copy of the file was mailed to Petitioner on September 1, 2022.

Also noted by the Secretary is Petitioner’s failure to complete the Hearing Request Administrative Wage Garnishment form or provide any contact information. As of the date of this Declaration, Petitioner has not provided HUD with his current paystub. The proposed repayment schedule is \$100.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards under 31 C.F.R., Part 901.1-901.2, or 15% of Petitioner’s disposable pay.

Based on the foregoing, the Secretary requests that the Court find Petitioner’s debt past due and legally enforceable, and that the Secretary’s proposed repayment terms fair.

DISCUSSION

According to the record, Petitioner filed a *Hearing Request* without forming the basis for an appeal or offering evidence in support of his claim. He requested more information about the subject debt and was informed in his *Notice* how to obtain such information but, to date, Petitioner has failed to meet his burden of proof. Due to lack of proof, the Court cannot reasonably assess the credibility of Petitioner's position.

In her *Statement*, the Secretary states that Petitioner "failed to complete the Hearing Request Administrative Wage Garnishment form or provide any contact information," a failed obligation previously acknowledged by the Court as well. But the Secretary has met her burden of proof that Petitioner owes the subject debt and, based on the evidence presented, the Secretary can proceed accordingly. Case law precedent has established that the Secretary's right to collect debt in such cases emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

As previously stated, Petitioner executed a Note with the Government in which he agreed that should default occur, Petitioner would be responsible for the balance owed unless there is proof of release or valuable consideration. In this case, Petitioner must produce evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Without such evidence, Petitioner's claim fails and the Court must find in favor of the Secretary.

Finally, Rule 26.4 (d) of Title 24 of the Code of Federal Regulations provides:


If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*. (Emphasis added).

Accordingly, pursuant to Rule 26.4(d), Petitioner's non-compliance with the Orders issued by this Court in this case also provides a separate basis for rendering a decision against Petitioner.

ORDER

Based on the foregoing, the Order issued on August 26, 2022 that imposed the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek 15% of Petitioner's disposable pay in satisfaction of the debt due and now enforceable.

SO ORDERED.

Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.